IN THE HIGH COURT OF BOMBAY AT GOA

WRIT PETITION NO.110/2005.

Mrs. Maria Sonia Elvira
Anunciacao Viegas e Lemos, also known
as Mrs. Sonia Lemos, major of age,
resident of Sinquerim, Candolim,
Bardez, Goa. ..... Petitioner.

V/s.

1. Mr. Nicolau Lourenco Serverino
   Pereira, s/o. Late Luis Jose Pereira,
2. Mrs. Glafina Joan a Pereira,
   wife of Defendant No.1.
3. Miss Jane Pereira,
4. Miss Anita Pereira,
5. Miss Yvonee Pereira,
6. Mr. Olwyn Pereira,
7. Mr. Oswald Pereira,
8. Miss Ashly Pereira,
   all major of age, r/o. H. No.
   98/1, Sinquerim, Candolim,
   Bardez, Goa.
9. Mrs. Cristalina Pereira e Sequeira,
   d/o. Late Mrs. Luzereta Pereira,
   r/o. 180/A, Block 5,
   Soman Nagar, Danpada Khar,
   Bombay – 400 052. ..... Respondents.

Shri Valmiki Menezes, Advocate for the petitioner.

Shri S. D. Lotlikar, Senior Advocate with Ms. K. Sambari, Advocate for the respondents No.1 to 8.

CORAM : R.M.S. KHANDEPARKAR, J.

DATE : 10TH FEBRUARY, 2006.

ORAL JUDGMENT :

Heard. Rule. By consent, the rule is made returnable forthwith.

2. The petitioner challenges the Order dated 14th July, 2004 to the extent the trial Court rejected the application seeking leave to rely upon the report prepared by one Sitakant Kamat, Surveyor.

3. Upon hearing the learned Advocates for the parties and on perusal of records, it is seen that undoubtedly, the petitioner was seeking to rely upon the plan and the report prepared by Sitakant Kamat, a copy of which was furnished to the other side. Being so, the impugned order refusing to rely upon the plan and the report prepared by Sitakant Kamat solely on the ground that the said report and the plan was not in existence, cannot be sustained. Apparently, the report sought to be relied upon discloses alleged inspection of site on 9.5.2004 and the application was filed on 28.6.2004. Merely because the petitioner had stated in the application that such a report had not come into possession of the petitioner that itself would not be justified to conclude that the report had not come into existence on that day. In any case, the prayer to produce the report and the plan prepared by Sitakant Kamat would not itself lead to the conclusion that the contents of such

documents are not to be proved by the author of such document. The document being a private document, the author thereof will have to be examined to establish the contents thereof, in which case the opposite party will get an opportunity to cross examine the author of such document. Being so, the credibility about the contents of the document will have to be ascertained by appreciating the evidence led by the parties. However, at this stage, I do not find justification for refusing the leave to rely upon the report and the plan prepared by the Surveyor Sitakant Kamat. In that view of the matter, the impugned order cannot be said to have been passed on proper application of mind by the trial Court and apparently there appears to be improper exercise of jurisdiction while dealing with the application filed by the petitioner seeking leave to rely upon the said document.

4. In the result, the petition succeeds. The impugned order is hereby set aside and the petitioner is permitted to rely upon the said report and the plan prepared by Sitakant Kamat. Needless to say that the credibility of such document will have to be ascertained by the trial Court while analysing the evidence on record. Rule is made absolute in the aforesaid terms, with no order as to costs.

R.M.S. KHANDEPARKAR, J.

ssm.